



# Second Chances

## Shining a Light on Human Rights Violations in Michigan's Child Sentencing Guidelines



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## INTRODUCTION

*The Convention on the Rights of the Child (CRC) explicitly prohibits these harsh sentences. The United States stands out as the only country, besides Somalia, that has not ratified the treaty.*

Each year in the United States, teenagers as young as 13 are sentenced to spend the rest of their lives in prison without the opportunity for parole – this means for the remainder of their life. Despite a global consensus that

children cannot be held to the same standards of responsibility as adults, the United States allows teenagers to be treated and punished in the same manner as adults, without any consideration of age, maturity or culpability.

Changes in U.S. law over the past 15 years have led to the sentencing of more than 2,000 teenagers to life without parole. There is no opportunity for release – ever. Although, the Convention on the Rights of the Child (CRC) explicitly prohibits these harsh sentences, the United States stands out as the only country, besides Somalia, that has not ratified the treaty. The international community is generally united in the view that teenagers should not be sentenced to life without parole and that their unique circumstances, and the



**Henry Hill** was a 16-year-old junior high school student in Saginaw, Michigan, when he and three friends got into an argument with an acquaintance at a park. Henry ran away and had already left the park when his 18-year-old friend shot and killed the acquaintance. Psychologists' recommended that Henry remain in the juvenile justice system, because he had the mental maturity of a nine-year-old. Although he had never been in trouble before, Henry was tried in an adult court system. In 1982, he was convicted of aiding and abetting a murder and sentenced to mandatory life without parole. He has now served 25 years in prison.

hope of rehabilitation, must be considered in deciding punishment.

Consistent with their international obligations, all but 14 states have outlawed juvenile life without parole (JLWOP). Of those 14, only three presently have prisoners serving life without parole (LWOP) sentences for crimes committed as teenagers, and those states have about a dozen prisoners combined. Michigan, on the other hand, currently holds over 300 men and women who were sentenced to life without parole as juveniles.

## MICHIGAN LAW

*"If our American way of life fails the child, it fails us all."*

*Pearl S. Buck*

Since 1996, 28 youthful offenders, ranging in age from 14 to 16, were tried as adults without any consideration of their maturity level or status as a juvenile.

The remainder were sentenced for crimes committed when they were 17 years old. Neither the juries that heard their cases, nor the judges who issued their sentences, had any discretion to mete out lesser sentences. All have served their time in adult prisons.

In Michigan, prosecutors alone have the authority to determine whether a child should be waived into adult court. There is no minimum age at which juveniles can be tried as adults and sent to prison for their natural life.

The overwhelming majority of those sentenced are minorities, 69 percent, are African American, although African Americans account for only 15 percent of Michigan's youth population.

The treatment of children who enter the criminal justice system is at odds with other areas of American law, which recognize that children lack the capacity to handle adult responsibilities. Thus, children under the age of 18 cannot legally use alcohol, serve on juries, vote, sign a contract, or be drafted into the military.



**Barbara Patricia Hernandez**

was 16 when her boyfriend coerced her into helping him steal a car as part of a plan to leave the state. When Barbara brought a man with a car to the house, her boyfriend attacked and killed the victim while she was in another room. Despite Barbara's age and lack of a prior record and questionable culpability, the prosecutor charged her as an adult. She had left home at the age of 14 as a result of ongoing physical and sexual abuse by her father and then her step-father, and dropped out of school after the 8th grade. She received the same sentence as her adult boyfriend who committed the murder – life in prison without possibility of parole. She has now served almost 20 years in prison.

Similarly, children under the age of 16 may not, without court permission, live away from their parents, drive, make decisions related to their education or medical treatment, or leave school.

## CHILDREN DESERVE PROTECTION

*"There can be no keener revelation of a society's soul than the way in which it treats its children."*

*Nelson Mandela*

The right to special protection of the child is a well-established principle of international law and is reflected in all major human rights treaties concerning the rights of the child.

The International Covenant on Civil and

Political Rights provides that "[e]very child shall have . . . the right to such measures of special protection as are required by his status as a minor." The American Convention establishes that "every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state." According to the Inter-American Court, the special protection of children derives "from the specific situation of children, taking into account their weakness, immaturity or inexperience." The Inter-American Commission on Human Rights has recognized that the obligation to provide special protection for children "includes ensuring the well-being of juvenile offenders and endeavor[ing] their rehabilitation."

## CHILDREN CAN BE REHABILITATED

International law also provides that the child is entitled to treatment which encourages rehabilitation. The Inter-American Court has held that: "When the State apparatus has to intervene in



**Patrick McLemore** was 16 when he and a 19-year-old acquaintance broke into a home they believed to be unoccupied to commit a robbery. When Patrick entered the home, he found his co-defendant had beaten the occupant to death. Prosecutors charged Patrick with first-degree murder in adult court. Patrick was convicted in 2000, and sentenced to mandatory life without the possibility of parole. His co-defendant, who was not a juvenile, pled guilty to second-degree murder and received a 30-60 year sentence. Patrick has now served seven years in prison.

offenses committed by minors, it should make substantial efforts to guarantee their rehabilitation in order to "allow them to play a constructive and productive role in society." The U.S. Supreme Court, in *Roper v. Simmons*, outlawed the death penalty for those 17 and younger, recognizing the potential to rehabilitate children stating,

*"Where, after all do universal rights begin? In small places, close to home... yet, they are the world of the individual person; the neighborhood he lives in; the school or college he attends. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerned citizen action to uphold them close to home, we shall look in vain for progress in the larger world."*

*Eleanor Roosevelt*

"it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed." Recognizing the special needs of the child and the goal of rehabilitation, international law emphasizes that incarceration of juveniles should be for the shortest duration possible.

Accordingly, the CRC absolutely prohibits life without parole and establishes that imprisonment of persons under 18 years old must be for the shortest appropriate period of time.

## **LIFE WITHOUT PAROLE VIOLATES THE HUMAN RIGHTS OF CHILDREN**

These laws violate well established international standards explicitly prohibiting juvenile life without parole. These include the American Declaration of the Rights and Duties of Man, which guarantees the right of children to special protection (Article VII), the right to be free from cruel,



**Kevin Boyd** was 16 when he was convicted, along with his mother, of the murder of his father. He suffered significant emotional and physical abuse from both his parents who divorced when he was 11, but continued to use him as a pawn in their often violent disputes. Kevin denies killing his father, but admits he gave keys to his father's apartment to his mother and her lover and knew they talked of killing him. Kevin went through 10 different schools before he dropped out after 10<sup>th</sup> grade. While in middle school, he attempted suicide and was subsequently sent to Fox Psychiatric Center where he was diagnosed with severe depression and placed on an anti-depressants. Kevin has now served more than 10 years in prison.

*"If we don't stand up for children, then we don't stand for much."*

*Marian Wright Edelman*

infamous and degrading treatment (Article XXVI), and the right to due process (Article XXV). It violates the International Covenant on Civil and Political Rights (ICCPR) and the Covenant for the Elimination of All Forms of Racial Discrimination (CERD), both of which prohibit racial discrimination. It violates the Convention Against Torture, Cruel, Inhumane, and Degrading Treatment (CAT), which obligates countries to prevent torture and cruel, inhuman or degrading treatment or punishment. Finally, it violates the Convention on the Rights of the Child (CRC), which requires, among other things, consideration of the best interests of the child.

While a LWOP sentence would be difficult for any person, teenagers are especially vulnerable to life sentences. Held in adult prisons and jails, they are at a much greater risk of harm than their peers in juvenile facilities. Sexual assault of teenagers is five times more likely in adult facilities and beatings by staff are almost twice as likely. Teenagers are often the prey for sexual predators, because of their young age and smaller size. They are also over-represented as victims of custodial sexual misconduct.

The mental anguish faced by teenagers who receive life sentences is reflected in the fact that their suicide rate in adult prisons is eight times that of teenagers in juvenile detention facilities. Psychological studies have found that the negative mental effects of imprisonment increase the longer one is imprisoned, but decrease as time of release nears. Since JLWOP prisoners know they will never be released, there is no break for a downward spiraling emotional state.



**Damion Todd** was 17 in 1986 when he and three friends were shot at outside a party in Detroit. Damion and his friends drove to a friend's house, retrieved a shotgun, and returned to the party. As they pulled up to the party, someone shot at them. Though Damion had never before used a gun, one of his friends pushed the gun into his hands and told him to shoot. Damion pointed the gun out the window at a 45 degree angle toward the sky and fired three times, hoping to scare the assailants. Unfortunately, one pellet hit an attendee of the party, killing her, and another shot wounded another guest. Although Damion had no prior criminal record, he was automatically tried in the adult court system and sentenced to mandatory life without parole. Damion has now served over 20 years in prison.

The individuals and organizations listed below strongly oppose the imposition of life without parole on children who have committed crimes while still minors.

American Friends Service Committee	Michigan Council on Crime and Delinquency
Bishop Thomas Gumbleton	Michigan County Social Services Association
Buddhist Peace Fellowship-Southeast Michigan Chapter	Michigan Federation for Children and Families
Campaign 4 Youth Justice	Michigan Protection and Advocacy Services
Central Detroit Christian Community Development Corporation	Michigan's Children
Center for Children's Law & Policy	Motivators Parent Child Advocacy Group
Church Women United	NAACP—Detroit Chapter
Children's Law Center of Massachusetts	National Juvenile Justice Network
Cranbrook Peace Foundation	Parent Child Advocacy Group
Emmaus House of Saginaw, Inc	Penal Reform International
Holy Cross Children's Services—Lansing	Pride at Work
Human Rights Watch	Prison Legal Services of Michigan
Indigent Defense Counsel-National Association of Criminal Defense Lawyers	Progressive Jewish Alliance
Intense Mentoring Inc.	Rose Hill Center
League of Women Voters of Michigan	Second Chance Legislation
Making It To the Finish Line Mary Church Terrell	Pickett Fences Ministries
Michigan Catholic Conference	St. Leo Church
Michigan League of Human Services	Team for Justice
MOSES: Metropolitan Organizing Strategy Enabling Strength in Michigan	The Battered Women's Clemency Project
Michigan Association for Children with Emotional Disorders	The Moorish Science Temple of America
Michigan Battered Women's Clemency Project	The Student Advocacy Center of Michigan
Michigan Coalition on Human Rights	Triangle Foundation
	U.S. Human Rights Network
	Washington Heights UMC



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